

20R057

STATE OF NORTH CAROLINA GENERAL COURT OF JUSTICE
COUNTY OF CABARRUS DISTRICT COURT DIVISION
19A JUDICIAL DISTRICT

FILED

2020 JAN 24 P 4 05

CABARRUS CO. C.S.C.

BY jw

In re the Adoption of Local Rules)
For Divorce Before the Clerk of)
Superior Court of Cabarrus County)

ADMINISTRATIVE ORDER
20-01

The attached Local Rules for Divorce before the Clerk of Superior Court are hereby adopted effective February 1, 2020, pursuant to the authority of N.C. Gen. Stat. §50-10 and shall apply to all cases filed on or after that date.

It is therefore so ORDERED, this the 24th day of January 2020.

Christy E. Wilhelm
The Honorable Christy E. Wilhelm
Chief District Court Judge

Local Rules for District 19A for Divorce
Before the Clerk of Superior Court

Rule 1: Eligibility

Any person eligible for a divorce after separation of one year pursuant to N.C.G.S. §50-6 who has not made any claims other than one for absolute divorce, who has met all the filing requirements set forth below and where one of the following events has occurred may request entry of Judgment for Absolute Divorce Before the Clerk (AOC-CV-710) so long as the Defendant is not an infant, incompetent person; and

- (1) The Defendant has defaulted for failure to appear; or
- (2) The Defendant has filed an Answer admitting the allegations of the complaint and has not filed any counterclaims; or
- (3) The Defendant filed a Waiver of his or her right to answer the Complaint.

A request to resume a former name does not disqualify a case from being eligible to be heard before the Clerk.

Any case not meeting these requirements shall be calendared for hearing before a District Court Judge. If the Clerk determines a filing does not meet these requirements, the Clerk shall mail a Continuance Order/Notice of Hearing to the parties or their attorney(s).

Rule 2: Filing Requirements

Any person filing a new action (no existing case) must file with the Clerk of Court one original and two copies of the following forms. These forms will be available in the office of the Civil Division of the Clerk of Court for Cabarrus County, North Carolina or on the North Carolina Judicial Branch website, www.nccourts.gov:

- a. Domestic Civil Action Cover Sheet (AOC-CV-750)
- b. Summons (AOC-CV-100)
- c. Complaint
- d. Servicemembers Civil Relief Act Affidavit (AOC-G-250)
- e. Judgment for Absolute Divorce Before the Clerk
- f. Certificate of Absolute Divorce (1 copy only)

The cost of filing is \$225.00 payable in cash, money order, debit/credit card, or check from an attorney made payable to the Clerk of Superior Court. There is an additional fee of \$10.00 for resumption of a former name.

Rule 3: Service

A copy of the required filings must be served upon the Defendant in compliance with North Carolina Rules of Civil Procedure 4(j) as follows:

- (1) Service by the Sheriff's Office of the County in which the Defendant resides or can be located. Any party requesting that the Cabarrus County Sheriff's Office serve the divorce documents shall pay an additional \$30.00 (cash, money order, debit/credit card, or check from an attorney made payable to the Cabarrus County Sheriff's Office). A party seeking service by a Sheriff's office in any other county or state should contact that Office directly for instruction on the process of service and applicable fees;
- (2) By mailing copies of the filed documents to the Defendant by registered or certified mail, return receipt requested, addressed to the party to be served and being successfully delivered to the addressee. Proof of service in this manner in the form of an Affidavit of Service must be filed along with proof of actual delivery, such as a returned "green card" or printout from the postal service;
- (3) By the filing of a signed and notarized Acceptance of Service;
- (4) Service upon the Defendant by a person authorized under the law to perfect service of process along with the filing of an appropriate Affidavit of Service.
- (5) Service by publication as allowed by law. Please note, if service by publication is necessary, the matter must be scheduled before a District Court Judge for hearing. Cases where service is achieved by publication are not eligible for Divorce Before the Clerk.

Rule 4: Notice

If the Defendant has made an appearance in the action by filing an Answer, a Notice of Divorce Before the Clerk (see Local Forms) must be filed with the Clerk of Court and properly served upon the Defendant at least ten (10) days in advance of the date set for review by the Clerk.

If the Defendant has made no appearance, N.C.G.S. §50-10(b) provides that no notice of the hearing shall be given.

If the Defendant has made an appearance in the action by filing an Answer and Counterclaim for any claim other than resumption of a former name, the case will not be eligible for Divorce Before the Clerk. The Clerk shall mail a Continuance Order or Notice of Hearing to the parties and their attorney(s).

Rule 5: Scheduling

Entry of Judgment for Absolute Divorce Before the Clerk will take place at times and dates designated by the Clerk of Superior Court of Cabarrus County. The Plaintiff must submit three (3) copies of a Judgment for Absolute Divorce Before the Clerk (AOC-CV-710) and one (1) copy of the Certificate of Absolute Divorce at least seven (7) calendar days prior to the date selected for review by the Clerk. Otherwise, the entry of judgment may be delayed or rescheduled.

Rule 6: Clerk's review

On the date designated for review, the Clerk of Superior Court or the Clerk's designee will examine the filings in a closed-door session to determine if all requirements have been met and entry of the Judgment for Absolute Divorce Before the Clerk is appropriate. Once signed, the Clerk will deliver by regular mail, or other acceptable means, signed and filed copies of the Judgment to the parties or the parties' attorneys.

STATE OF NORTH CAROLINA

CABARRUS COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

FILE NO.:

Plaintiff

Vs.

NOTICE OF DIVORCE BEFORE THE CLERK

Defendant

YOU ARE HEREBY NOTIFIED that the Clerk of Court for Cabarrus County, North Carolina will review Plaintiff's claim for divorce on Friday _____, 20____ in the Civil Clerk's Office, located in the Cabarrus County Courthouse, 77 Union Street S., Concord, North Carolina 28025.

If you have not filed an Answer or other responsive pleading within the time allowed by law, a Judgment of Divorce Before the Clerk may be signed and entered on the date set forth above. Please note, this is a closed-door review and only the filing of an appropriate pleading will be considered.

If you have timely filed an Answer or other responsive pleading and want a hearing with a Judge, please contact the Cabarrus County Civil Clerk's Office.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he/she has served a copy of the foregoing NOTICE OF DIVORCE BEFORE THE CLERK on the Defendant, by placing a copy of the same in a postage pre-paid wrapper and depositing it with the United States Postal Service, properly addressed as follows:

Name: _____

Address: _____

This the _____ day of _____ 20_____.

Plaintiff or Attorney for Plaintiff

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Court Division

Name Of Plaintiff

VERSUS

Name Of Defendant

JUDGMENT FOR
ABSOLUTE DIVORCE
BEFORE THE CLERK

G.S. 50-10(e)

NOTE TO CLERK: This form is drafted for granting absolute divorce when plaintiff's verified complaint alleges all of the required facts and the plaintiff proves service of the summons and complaint, and notice of hearing, if required. If plaintiff's complaint is not verified or if the complaint does not allege all of the facts necessary, the clerk should not enter a judgment.

FINDINGS

This case was heard by the undersigned Clerk of Superior Court upon the Plaintiff's complaint for an Absolute Divorce. From the verified complaint and other evidence presented, the Court finds the following facts:

1. The defendant was properly served with the Summons and Complaint in this action as provided by the Rules of Civil Procedure.
2. The defendant
 - a. failed to make an appearance.
 - b. admitted all of the plaintiff's allegations in the answer.
 - c. filed a written waiver of the right to answer.
3. The defendant is not an infant or incompetent.
4. a. The defendant was served with notice of this hearing as required by the Rules of Civil Procedure.
 b. The defendant was not served with notice of this hearing because defendant failed to make an appearance.
 defendant filed a written waiver of the right to receive notice of any hearings.
5. The plaintiff defendant is a resident of _____ County, North Carolina and has been a resident of the State of North Carolina for more than six (6) months immediately preceding the commencement of this action.
6. The plaintiff and defendant were married on or about (give date) _____.
7. On the date this complaint was filed, the parties had lived separate and apart for more than one year; that at the time of separation the plaintiff defendant had intent to remain continuously separate and apart from the defendant plaintiff; and the parties have lived continuously separate and apart since their separation without resuming the marital relationship.
8. The plaintiff has requested to use the plaintiff's former name of (give name) _____.

CONCLUSIONS

Based upon the foregoing findings of fact, the Court concludes as a matter of law that it has jurisdiction over the subject matter and the parties and that the plaintiff is entitled to an Absolute Divorce based on one year's separation.

ORDER

Therefore, it is ordered that:

1. The bonds of matrimony which have existed between the parties are dissolved and the plaintiff is granted an Absolute Divorce from the defendant.
2. The plaintiff is allowed to resume the plaintiff's former name set forth above.

Date

Signature

Assistant CSC

Clerk Of Superior Court